

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c) :

DL THOMPSON LAW, PC :
DONNA L THOMPSON, ESQ. (DLT-0931) :
1442 Lakewood Road :
Manasquan, NJ 08736 :
Tel: 732-292-3000 :
Fax: 732-292-3004 :
Attorney for Creditor :
AUTOMOTIVE FINANCE CORP. :

IN RE:	:	CASE NO. 22-17933-JKS
	:	
BAV AUTO, L.L.C.	:	CHAPTER # 11
	:	
Debtor.	:	HON. JOHN K. SHERWOOD

CERTIFICATION BY CREDITOR
(In support of Motion to Vacate the Automatic Stay)

Mark Branson does hereby certify as follows:

1. I am a Risk Manager for Plaintiff, Automotive Finance Corporation. (“AFC”) I am fully familiar with the facts of this matter and am authorized to make this Certification on behalf of AFC.

2. AFC is an Indiana Corporation, with principal offices located at 11299 North Illinois Street, Carmel, Indiana, 46032.

3. AFC is in the business of, inter alia, providing floor plan financing to automotive dealers and rental companies. The term “floor plan financing” refers to a loan made to an automobile dealer to finance their inventory which is secured by liens on the motor vehicles.

Generally in the event of a default on the payments, the floor plan lender takes possession of the motor vehicles it has secured liens on and sells them, applying the proceeds to satisfy the balance on the defaulted loan.

4. Debtor BAV Auto, L.L.C. (“BAV”) is an automotive dealer that obtained floor plan financing from AFC. Annexed as Exhibit A is a copy of Demand Promissory Note and Security Agreement dated January 9, 2019. Annexed as Exhibit B are AFC’s filed UCC-1 statements reflecting their lien. Annexed as Exhibit C is a report of all outstanding balances due to AFC, currently the sum of \$442,216.55.

5. Under the floor plan financing agreement, AFC provides financing to the automobile dealer (BAV) to finance its inventory. AFC holds the physical titles to the motor vehicles it has provided floor plan financing for. When a customer purchases a motor vehicle from BAV, the dealer pays AFC the balance owed on that particular vehicle for the floor plan loan and AFC releases the physical title to BAV to provide to the customer.

There are various ways for dealers to defraud the floor plan lender, such as by obtaining a duplicate title from the department of motor vehicles and selling the vehicle without paying the floor plan lender. When this happens, the vehicles are labeled as being “Sold out of Trust” or “SOT” for short. In the case of this dealership, investigation has revealed the dealership sold the twenty-eight units listed on Exhibit D without paying AFC for the floor plan financing and obtaining the title to the units.

When AFC ascertained this fraud was occurring with BAV, they quickly repossessed the floor plan financed units that remained on the dealership lot. The list of repossessed vehicles is annexed hereto as Exhibit E. These units are currently being stored at auction awaiting sale.


6. The repossessed units were seized prior to the bankruptcy filing. AFC is a secured creditor. Exhibit A and B. After the repossessed units are sold at auction, AFC anticipates it will have a remaining balance owed from BAV of approximately \$380,000.00 for which it will file a proof of claim.

7. This Certification is filed in support of AFC's motion for relief from the automatic stay to allow the repossessed collateral (Exhibit E) to be sold at auction and the proceeds applied to the outstanding balance owed to the creditor, AFC.

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

Dated: November 14, 2022



Mark Branson
Risk Manager
Automotive Finance Company